

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE

SAN FRANCISCO, CA 94102-3298

July 17, 2015

Agenda ID #14154

TO PARTIES OF RECORD IN DRAFT RESOLUTION ALJ-313:

This is the draft Resolution of Administrative Law Judge (ALJ) Katherine MacDonald regarding Resolving the Appeal K.15-03-007 of Citation No. SED FC-697 of Allas Limousine Company, LLC (PSG 3852). It will not appear on the Commission's agenda sooner than 30 days from the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft resolution, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own order. Only when the Commission acts does the resolution become binding on the parties.

You may serve comments on the draft resolution. Opening comments shall be served no later than August 6, 2015. Service is required on all persons on the attached service list. Comments shall be served consistent with the requirements of Pub. Util. Code § 311(g) and Rule 14.5 of the Rules of Practice and Procedure.

Finally, comments must be served separately on Administrative Law Judge MacDonald at kk3@cpuc.ca.gov, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ KAREN V. CLOPTON

Karen V. Clopton, Chief
Administrative Law Judge

KVC:lil

Attachment

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ-313
Administrative Law Judge Division

RESOLUTION

RESOLUTION ALJ-313. Resolves the Appeal K.15-03-007 of Citation No. SED FC-697 of Allas Limousine Company, LLC (PSG 3852).

SUMMARY

This resolution resolved the appeal of Citation No. SED FC-697 issued to Allas Limousine Company, LLC (Allas) by the California Public Utilities Commission's (Commission) Safety and Enforcement Division (SED) on March 6, 2015. Citation No. SED FC-697 issues a fine of \$2,000 for three violations (85 counts) of the Public Utilities Code and the Commission's General Order 157-D during the period of June 1, 2014 through November 4, 2014.

BACKGROUND

The Commission regulates charter-party carriers of passengers primarily pursuant to the Passenger Charter-Party Carriers' Act (Pub. Util. Code § 5351, et seq.) Pursuant to Resolution ALJ-187, issued by the Commission on September 22, 2005, SED¹ is authorized to issue citations to various classes of transportation carriers for violation of the Public Utilities Code and/or Commission orders. In turn, a carrier issued such a citation may accept the fine imposed or contest it through a process of appeal under Resolution ALJ-299.²

¹ ALJ-187 confers authority on the Consumer Protection and Safety Division now known as the Safety and Enforcement Division.

² The Commission issued Resolution ALJ-299 on June 26, 2014 for application beginning on January 1, 2015.

On March 6, 2015, SED issued Citation FC-697 for Violations of Public Utilities Code to Allas Limousine Company, LLC (Allas). The underlying investigation covered the period of June 1, 2014 through November 4, 2014. The citation was issued for violations during the period from June 1, 2014 through November 4, 2014 as follows:

1. Failure to enroll one driver into the Department of Motor Vehicle (DMV) Employer Pull Notice Program (EPN) in violation of Pub. Util. Code § 5374(a)(1)(D); General Order (GO) 157-D, Part 5.02 and California Vehicle Code (CVC) § 1808.1. [1 count];
2. Failure to enroll one driver into a mandatory alcohol and controlled substance testing certification program for pre-employment and random drug testing in violation of Pub. Util. Code § 5374(a)(1)(I) and GO 157-D, Part 10.02. [1 count]; and
3. Failure to maintain and issue waybills containing information required by Pub. Util. Code § 5381.5(a)(1)(2)(c) and GO 157-D, Part 301. [83 counts]

APPEAL

Allas filed a timely appeal of Citation FC-697 and the Commission granted the request for an appeal hearing. The appeal hearing was held on June 18, 2015. Allas and SED appeared as parties at the scheduled hearing. SED offered into evidence the Confidential Compliance filing,³ which attached the following attachments:

- Attachment 1: DMV EPN Records
- Attachment 2: Payment Statements
- Attachment 3: Drug Test Records
- Attachment 4: Waybill

In addition, during the evidentiary hearing SED also introduced:

- SED 1: Filed Citation Log (Confidential)
- SED 2: GO 157-D
- SED 3: Resolution TL-19114

³ A public version of the Confidential Compliance filing was also filed in this proceeding.

SED moved to file Citation FC-697-C and Exhibit SED 1 under seal. The evidentiary record was submitted on June 18, 2015. With respect to the confidential material under seal, the Commission has granted similar requests for confidential treatment in the past and does so again herein. We agree the information involves both personal and market sensitive information. We therefore authorize the confidential treatment of Citation FC-697-C and Exhibit SED 1 as set forth in the ordering paragraphs of this resolution.

RESOLUTION OF THE APPEAL

Violation of Pub. Util. Code § 5374(a)(1)(D)

Pub. Util. Code § 5374(a)(1)(D) and GO 157-D provide that every carrier shall enroll in the “Pull Notice Program” of the DMV.

Allas contends there was no violation of Pub. Util. Code § 5374(a)(1)(D) for failure to enroll its only driver, Akop Gavadian (Gavadian) in the DMV’s EPN program because Mr. Gavadian, was enrolled as a driver for Luxaride, Inc. Allas explained that it had used Alcor Agency (Alcor) to assist it in establishing Allas as a corporation and was told that Alcor would complete all required documentation. Allas enrolled Gavadian into the EPN program on November 4, 2014, under Requester Code CV819.⁴

On January 14, 2015, SED confirmed with the DMV online database that Gavadian was enrolled in the EPN program as a driver for Allas on November 5, 2015. The parties stipulated that Gavadian drove for approximately 83 days, conducting at least 355 trips prior to being enrolled in the DMV’s EPN program.⁵

The evidence shows that Allas violated Pub. Util. Code § 5374(a)(1)(D) for failure to enroll its only driver, Akop Gavadian in the DMV’s EPN program under Allas’ requester code CV819. The importance of the EPN program cannot be understated. It is one of the Commission’s tools that “provides employers and regulatory agencies with a means of promoting driver safety through the ongoing review of driver records.”⁶

⁴ Joint Stipulation of Undisputed Facts, No. 3 at p 1.

⁵ Joint Stipulation of Undisputed Facts, No. 5 at p.2.

⁶ See <http://www.cpuc.ca.gov/PUC/transportation/FAQs/psgfaqs.htm>.

Violation of Pub. Util. Code § 5374(a)(1)(I)

As relevant here, Pub. Util. Code § 5374(a)(1)(I) provides:

(a)(1) Before a permit or certificate is issued or renewed, the commission shall require the applicant to establish reasonable fitness and financial responsibility to initiate and conduct or continue to conduct the proposed or existing transportation services.

The commission shall not issue or renew a permit or certificate pursuant to this chapter unless the applicant meets all of the following requirements:

...

(I) It provides for a mandatory controlled substance and alcohol testing certification program as adopted by the commission pursuant to Section 1032.1.

Finally GO 157-D, Part 10 requires all charter-party carrier applicants (new and renewal) who propose to employ any driver who will operate a vehicle having a seating capacity of 15 persons or less, including the driver, must provide for a mandatory controlled substance and alcohol testing certification.

Joint Stipulation of facts states that Gavadian submitted to a pre-employment drug test on June 23, 2014 and results were submitted on July 3, 2014.⁷ Allas enrolled into the drug test program on August 4, 2014.⁸ Parties further agreed that Gavadian drove for Allas from June 18, 2014 – July 3, 2014, before pre-employment drug testing and enrollment into a mandatory drug test program.

Allas contends that no violation should issue because Gavadian was properly enrolled in a mandatory drug test program for Luxaride, Inc. beginning October 14, 2013 and that pre-employment drug testing had also been properly conducted for Luxaride, Inc. on June 23, 2013 with results submitted on October 17, 2013 with negative results.

Although Gavadian had been enrolled in a drug testing program, his enrollment was for a different corporation not before the Commission in this appeal. SED provided evidence that Allas did not conduct pre-employment testing until June 23, 2013 and

⁷ See also Compliance Filing, Attachment 3.

⁸ Joint Stipulation, Nos. 7-8 at p.2.

results were not submitted until July 3, 2014.⁹ It is also undisputed that Allas had not enrolled Gavadian into the mandatory drug test program until August 23, 2014.¹⁰ As a result, Allas violated Pub. Util. Code § 5374(a)(1)(I) and GO 157-D, Part 10.02.

Pub. Util. Code § 5381.5(a)(1)(2)(c) and GO 157-D, Part 301

Pursuant to Pub. Util. Code § 5381.5 and GO 157-D, Part 301, every charter-party carrier requires certain information to be included on a waybill or trip report. Under GO 157-D, Part 3.01 the waybill shall include:

1. Name of carrier and TCP number.
2. Vehicle license plate number
3. Driver's name.
4. Name and address of person requesting or arranging the charter.
5. Time and date when charter was arranged.
6. Whether the transportation was arranged by telephone or written contract.
7. Number of persons in the charter group.
8. Name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation.
9. Points of origination and destination.

A waybill or trip report may be kept in electronic or hardcopy format.¹¹ However, Pub. Util. Code § 5381.5(a)(1)(2)(c) requires a charter-party carrier to produce in its office a hardcopy of any waybill or trip report when requested by the Commission or one of its authorized representatives. [Emphasis added.]

Allas contends that no violation should issue because waybills were available in electronic form and that it was permitted to issue electronic waybills.

During the investigation, which ultimately resulted in issuance of citation FC-697, SED requested waybills for trips conducted during the review period. Allas provided SED with a printout of a Payment Statement for Akop Gavadian for trips driven for Uber.¹²

⁹ Compliance Filing of the Safety and Enforcement Division(Compliance Filing) for Citation FC-697-C, Attachment 3.

¹⁰ As a result, Mr. Gavadian worked for 14 days and conducted at least 59 trips prior being enrolled. (Joint Stipulation, No. 9 at p. 2.)

¹¹ Pub. Util. Code § 5381.5(a)(1)(2)(b).

¹² Compliance Filing, Attachment 2.

The statement provides dates for trips, identification code for each trip, what type of car was used, the total fare, the amount of Uber Fee, and total earnings for each trip. SED witness Rayford Scott, Investigator/Badge #48 (Investigator Scott) testified that the Payment Statement did not have the information required by GO 157-D for a waybill.¹³

The evidence shows that Allas failed to produce in its office a hardcopy of waybills or trip report when requested by the Commission.¹⁴ Further, Allas did not provide evidence during the investigation or with its appeal that waybills issued, whether by Allas or through Uber, contained the required information. As a result, Allas violated Pub. Util. Code § 5381.5(a)(1)(2)(c) and GO 157-D, Part 3.01.

SAFETY

The Commission has broad authority to regulate charter-party carriers, particularly with regard to safety concerns. (See for example, Pub. Util. Code § 451, 5382 and 5387.) We are mindful that the statutory schemes under which this citation was issued in this case for failure to enroll in the DMV's EPN program and the requirements for pre-employment and mandatory drug testing are intended to secure the safety of charter-party carrier passengers.

COMMENTS

Pub. Util. Code § 311(g)(1) requires that a draft resolution be served on all parties, and be subject to a public review and comment period of 30 days or more, prior to a vote of the Commission on the resolution. A draft of today's resolution was distributed for comment by the interested parties.

FINDINGS

1. Gavadian is the sole driver employed by Allas.
2. Gavadian began driving for Allas on June 18, 2014.
3. Gavadian drove approximately 83 days prior to being enrolled in the DMV's EPN program under Allas' requester code on November 5, 2014.
4. Gavadian submitted to a pre-employment drug test on June 23, 2014.
5. The pre-employment drug test results for Gavadian were submitted on July 3, 2014.

¹³ See Transcript (Tr.) at 23-24.

¹⁴ Although Allas may issue electronic waybills under Pub. Util. Code § 5381.5(a)(1)(2)(b), it must be able to provide hardcopy of any waybill or trip report, in its office when requested by the Commission.

6. Allas enrolled Gavadian in the mandatory drug test program on July 3, 2014.
7. Allas provided hard copy of a document entitled Akop Gavadian: Payment Statement in response to Investigator Scott's request to review hard copy of waybills or a trip report.
8. The report provided to Investigator Scott did not contain all the name of carrier, TCP number, vehicle license plate number, name and address of person requesting or arranging the charter, time and date charter was arranged, whether the transportation was arranged by telephone or written contract, number of persons in the charter group, name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation and points of origination and destination.
9. On January 20, 2015, Allas provided a waybill that contains the name of carrier, TCP number, driver's name, vehicle license plate number, name and address of person requesting or arranging the charter, time and date charter was arranged, whether the transportation was arranged by telephone or written contract, number of persons in the charter group, name of at least one passenger in the traveling party, or identifying information of the traveling party's affiliation and points of origination and destination.

THEREFORE, IT IS ORDERED that:

1. Citation FC-697 is affirmed.
2. Allas Limousine Company, LLC must pay a penalty of \$2,000 by check or money order payable to the California Public Utilities Commission and mailed or delivered to the Commission's Fiscal Office at 505 Van Ness Avenue, San Francisco, California 94102. Allas Limousine Company, LLC may request a payment plan from the Safety and Enforcement Division.
3. Allas Limousine Company, LLC must either request a payment plan from the Safety and Enforcement Division or make full payment of the penalty within 30 days of the effective date of this order. Write on the face of the check or money order, "For deposit to the General Fund per Resolution ALJ-313".
4. The Safety and Enforcement Division's motion to file FC-697-C and Exhibit SED 1 under seal are granted.

This resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

Timothy J. Sullivan
Executive Director

RESOLUTION ALJ-313 - Resolves the Appeal K.15-03-007 of Citation No. SED FC-697 of Allas Limousine Company, LLC (PSG 3852).

INFORMATION REGARDING SERVICE

I have electronically served all persons on the attached official service list who have provided an e-mail address for Resolution ALJ-313.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability/hardcopy of the document to be served by U.S. mail on all parties listed in the "Party" category of the official service list for whom no e-mail address is provided.

The official service list I use is current as of today's date.

Dated July 17, 2015, at San Francisco, California.

/s/ LILLIAN LI

Lillian Li

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.

***** SERVICE LIST *****

**Appeal K1503007 of Citation No. SED FC-697 of
Allas Limousine Company, LLC (PSG 3852)**

***** PARTIES *****

Anush Gavadian
Ceo
ALLAS LIMOUSINE COMPANY, LLC
9000 VANALDEN AVENUE, UNIT 107
NORTHRIDGE CA 91324
For: Allas Limousine Company, LLC

Adrianne E. Johnson
Safety and Enforcement Division
RM. 500
320 West 4th Street Suite 500
Los Angeles CA 90013
(213) 576-7098
adj@cpuc.ca.gov

Brian Kahrs
Safety and Enforcement Division
AREA 2-F
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1229
bk1@cpuc.ca.gov

Katherine MacDonald
Administrative Law Judge Division
RM. 5042
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1839
kk3@cpuc.ca.gov

Elizaveta I. Malashenko
Safety and Enforcement Division
RM. 2203
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2349
eim@cpuc.ca.gov

Kerriann Sheppard
Legal Division
RM. 4107
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-3942
sk6@cpuc.ca.gov

***** STATE EMPLOYEE *****

Arocles Aguilar
Legal Division
RM. 5138
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2015
aro@cpuc.ca.gov

Valerie Beck
Safety and Enforcement Division
RM. 2201
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-2665
vjb@cpuc.ca.gov

Greg Collentine
Safety and Enforcement Division
180 Promenade Circle, Suite 115
Sacramento CA 95834 2939
(916) 928-2733
gfc@cpuc.ca.gov

Travis Foss
Legal Division
RM. 5026
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1998
tff@cpuc.ca.gov

Ana M. Gonzalez
Administrative Law Judge Division
RM. 2106
505 Van Ness Avenue
San Francisco CA 94102 3298
(415) 703-1473
amg@cpuc.ca.gov

(END OF SERVICE LIST)